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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|-------------------------|---------------------|------------------|
| 09/881,935 | 06/15/2001 | Bhajmohan (Ricky) Singh | 7312/US/NP | 8096 |
| 7590 | 05/04/2005 | | EXAMINER | |
| John S. Beulick Armstrong Teasdale LLP One Metropolitan Sq., Suite 2600 St. Louis, MO 63102 | | | BHAT, NINA NMN | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1764 | |

DATE MAILED: 05/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|-----------------|--------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 09/881,935 | SINGH ET AL. | |
| Examiner | Art Unit | | |
| N. Bhat | 1764 | | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 2-14-2005.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-28 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-28 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. _____.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.

5) Notice of Informal Patent Application (PTO-152)

6) Other: _____.

DETAILED ACTION

1. Applicant's amendments and arguments dated February 9, 2005 have been entered and fully and carefully considered. Applicant's amendment to the claims removes the rejection under 102(e) over Albene because Albene does not teach providing an individual pet profile that includes information based on user input and information obtained from a biological sample analysis of the pet. However, the claims remain rejected under 103(a) as will be delineated below:
2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1-17,23 and 25-28 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Albene for reasons of record stated September 10, 2004.

Albene et al. teaches collecting information relating to certain attributes and physical conditions of a pet to form a pet profile, analyzing the information from the pet profile to form a dietary health management system.[Note Column 3, last paragraph.).

Mixtures of selected functional ingredients can be added to a pre-made dry kibble.[Note Column 3, line 18 and Column 4, lines 55-57]. Included are specific feeding instructions.[Note Column 2, lines 67-68]. With respect to claim 12, receiving through an electronic interface a user input comprising an individual pet profile, Albene et al. teaches the appropriate formulation for the customized dry kibble product and addition pet food products can be determined manually from the pet profile or alternatively a software program that will convert the information into an appropriate formulation for the customized dry kibble will and will determine the proper wet food, for complete dietary health management system is contemplated for example the software system could be a WINDOW based software system that accepts manual input about the general health conditions of an animal and can be run on a standard desk top computer (electronic interface) and is capable of performing basic mathematical algorithms. [See Column 5, lines 33-57] With respect to claim 17, wherein the custom pet food additive based on the processed individual pet profile comprises creating at least one of a gravy, sauce coating, thickener, topping and a powder this specifically taught in Claim 1, step e, where applicant recites coating the volume of dry kibble pieces with a mixture of function ingredients to coat the kibble and specifically teaches coating with safflower oil, fax seed oil, vitamin E oil, as also taught in Example 1. Albene teaches providing both a wet or dry customized dog food. With respect to claim 23, in table 3, Albene teach providing a customized dry kibble, which includes Omega Plus, which is a source of omega three fatty acid, which added to the Kibble. With respect to claim 24, Albene teaches providing a pet food for tartar control and using sodium acid pyrophosphate is a

well recognized tartar controlling ingredient and would have been implicit in the trademark TARTAR CHEW.[Note Column 5, lines 26-27. With respect to Claim 25, a palatability agent include materials such as chicken, and chicken meal which is a flavoring which is palatable to a pet or animal. With respect to claim 26, Albene teaches a blending system which includes a storage containers of different types of kibble and can include high protein large sized kibble, low fat, high fiber small sized kibble which can be blended with other coatings and/or cocktails to provide a custom pet food which includes adding a source of fiber and admixed with various cocktails which are used to form customized pet foods. [Note Column 5, lines 1-32 and Column 6, lines 1-14]] With respect to claims 27-28 Albene teaches adding at least one vitamins and minerals and teaches supplying the appropriate ratio of kibbles to the additive.[Note the blending system in Column 6, lines 48-67]

However, Albene does not teach providing an individual pet profile that includes information based on user input and information obtained from a biological sample analysis of the pet.

Albene renders obvious the method of suggesting a pet food for a pet by obtaining an individual pet profile for the pet; processing the individual pet profile, suggesting a pre-manufactured kibble that correlates with the pet profile. Suggesting a pre-manufactured additive that correlates with the processed pet profile and providing a set of feeding instructions for the pet. This method is inherent to any skilled veterinarian if not inherent would have been obvious as the method is no more than what a trained veterinarian would be capable of doing if a pet owner would bring a pet to the vet's

office with problems of irritable bowel, lack of eating, over weight, or generally an unhappy pet was brought into a vet's office.

5. Claims 18-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Albene et al. in combination with Jones et al. [USP 6,042,857]

Albene et al. discloses the invention substantially as claimed for reasons delineated above but does not teach including specifically psyllium fiber to the additive in the proportions as claimed nor specifically pH lowering agents to bring the pH between about 2.0 and 3.0

Jones et al. teach providing a pet food, which is microbially stable, has an increase shelf life, freshness, palatability and nutritional value added pet food. The ingredients included are high fibers such as oats, flax seed meal and psyllium to produce a diet high in soluble fiber.[Note Column 3- lines 55-Column 4, lines 39]. Johnson et al. teach that the psyllium is added in order to bind the water, which renders the water unavailable for microbial growth and oxidation. The amount of edible soluble fiber is above 3% which is higher than what is claimed by applicant but to reduce the amount or to modify the amount of psyllium added would have been obvious to one having ordinary skill in the art because the art recognizes that the amount of soluble fiber does bind water and to modify based on how much water binding is required and health benefits to be achieved has been taught by both Albene and Jones and to make the modification has been taught and suggested by the prior art. Further taught by Jones et al. is to provide a prolonged shelf life pet food and the products include a combination of preservatives and/or antimycotics and include high levels of sugars,

edible organic acids and inorganic acids to main pH and to provide the pH as claimed where acids have been broadly taught would have been obvious to one having ordinary skill at the time the invention was made art absent criticality in showing.[Note Column 4, lines 63-67]

6. Applicant argues that no where in Albene is user input from the pet owner obtained or that using a biological sample from the pet used in order to provide a pet food specifically formulated to the pet. The examiner disagrees with applicant's assessment of the art. Albene teaches in Column 32, lines 45-54, providing a customized dietary health management system for pets that includes a method of providing a unique dry food product coupled with wet food, functional snacks and treats and health accessories selected on the basis of the nutritional needs of the animal. The customized dietary health management system is formulated from information provided by the pet owner, the pet's veterinarian or animal heath care provided that relates to certain attributes and physic conditions of the pt. This information is collected on the pet profile form completed by the pet owner or veterinarian. Admittedly, this is not inputted directly into a computer which includes the software package for taking the pet profile and then correlating it with the specific food. But, implicitly, after filling out the form, the information from the pet profile is analyzed and a customized diet and health management system is formulated. The dietary health management system customized the essential and nonessential nutrients for the animal based on a comparing the pet to an average companion pet and correlating and providing an individual diet based on the animal's life stage, activity, level and other health related

inputs. The type of information requested for pet profiling is taught in Table 2. With respect to applicant's limitation and argument that Albene does not teach taking information from a biological sample analysis from the pet, this is not persuasive because Albene teaches that the pet profile form can be completed by a veterinarian or a the pet health care provider, most veterinarians or health care providers will perform blood tests or any other type of tests in order to diagnosis a problem of a pet. It would have been obvious if there were information that the veterinarian had, from a biological sample, i.e., blood chemistry, the veterinarian when filling out the profile would be able to include this information using the Albene pet profile form, thus rendering applicant's invention as a whole obvious.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. Bhat whose telephone number is 571-272-1397. The examiner can normally be reached on Monday-Friday, 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Calderola can be reached on 571-272-1444. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



N. Bhat
Primary Examiner
Art Unit 1764